IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 26, 2007

ARTHUR W. STAMEY v. STATE OF TENNESSEE and VIRGINIA LEWIS, WARDEN

Appeal from the Circuit Court for Bledsoe County
No. 62-2006 J. Curtis Smith, Judge

No. E2006-02047-CCA-R3-HC - Filed August 17, 2007

The petitioner, Arthur W. Stamey, appeals the Bledsoe County Circuit Court's summary dismissal of his petition for a writ of habeas corpus. The petitioner was convicted pursuant to a guilty plea of one count of aggravated sexual battery and received a sentence of nine years as a violent offender. The petitioner contends that his guilty plea was involuntary and that his sentence was illegal due to the original trial court's imposition as a condition of release that he not be around children for the rest of his life, which he claims is in contravention of the statutory authority afforded the Board of Probation and Parole pursuant to Tennessee Code Annotated section 39-13-524. The habeas corpus court summarily dismissed the petition. Following our review, we conclude that the original trial court had no authority to impose such a condition, and we reverse the judgment of the habeas corpus court and remand the case for the entry of an order to remand the case to the original trial court for the entry of a corrected judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed in Part and Reversed in Part and Remanded

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and THOMAS T. WOODALL, J., joined.

Arthur W. Stamey, Pikeville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; Jennifer L. Bledsoe, Assistant Attorney General; J. Michael Taylor, District Attorney General, for appellee, State of Tennessee.

OPINION

The habeas corpus court summarily dismissed the petition for writ of habeas corpus based upon its finding that the petitioner's claim regarding an involuntary plea was not cognizable in a habeas corpus proceeding and, even if taken as true, would render the judgment of conviction voidable and not void. The habeas corpus court also found that a condition of supervision regarding the petitioner's contact with children was surplusage, that it did not render the judgment void, that it was a common condition imposed by the board of parole, and that it did not constitute a restraint within the meaning of Tennessee Code Annotated section 29-21-101. On appeal, the petitioner claims that the original trial court was without authority to impose the condition of supervision and that, therefore, the judgment is void. The state counters that the petitioner is not entitled to habeas corpus relief because the condition of supervision was not an element of the bargained-for sentence of nine years and, regardless of the authority to impose the condition, the nine-year sentence is legal.

ANALYSIS

Tennessee law provides that "[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment." Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109.

We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). Initially, we conclude that the habeas corpus court correctly denied relief based upon the petitioner's allegation of an involuntary guilty plea. Claims regarding the voluntariness of a guilty plea consistently have been held not to be cognizable in a habeas corpus proceeding. Archer, 851 S.W.2d at 163. Furthermore, any issue regarding the voluntariness of the petitioner's plea was previously litigated in the post-conviction proceeding, the denial of which was affirmed on appeal. Arthur W. Stamey, III v. State, No. E2005-02261-CCA-R3-PC, 2006 WL 1097450 (Tenn. Crim. App. Apr. 7, 2006). Issues that have been previously determined may not be relitigated in a subsequent habeas corpus proceeding. Gant v. State, 507 S.W.2d 133, 137 (Tenn. Code Ann. 1973). However, we must still address the remaining issue of whether the petitioner's claim of error regarding the original trial court's imposition of a condition of supervision is cognizable in a habeas corpus proceeding.

In dismissing the petition, the habeas corpus court found that "[a] condition of supervision does not constitute imprisonment or restraint within the meaning of those terms [of the habeas corpus statute]." With this finding, we respectfully disagree. In Hickman v. State, 153 S.W.3d 16, 22 (Tenn. 2004), our supreme court discussed the meaning of "restraint of liberty" in the context of the habeas corpus statute and held that "when [a] challenged judgment itself imposes a restraint upon the petitioner's freedom of action or movement, the petitioner is entitled to seek habeas corpus relief." The examples of restraint cited by the court included a "'restraint that exists by virtue of the conditions of parole or probation.'" Id. at 23 (citing 39 Am. Jur.2d Habeas Corpus, § 17 (1999)). In this case, the original trial court imposed as a condition to the petitioner's community supervision for life that the petitioner "may not be around children under the age of eighteen (18) for life." We conclude that this qualifies as a restraint of liberty and that the petitioner is entitled to seek habeas corpus relief challenging the propriety of the original trial court's judgment. See Leonard v. Criminal Court of Davidson County, 804 S.W.2d 891, 892 (Tenn. Crim. App. 1990) (prohibition against engaging in business as condition of probation for violation of Sales Tax Act was a restraint of liberty that could be properly challenged in habeas corpus proceeding).

Turning now to the propriety of the original trial court's action in imposing a condition to lifetime community supervision, we note, as did the habeas corpus court, that Tennessee Code Annotated section 39-13-524(d)(1) grants the Board of Probation and Parole the authority "to establish such conditions of community supervision as are necessary to protect the public from the person's committing a new sex offense, as well as promoting the rehabilitation of the person." Therefore, the original trial court was without authority to impose the condition in the judgment of conviction. The habeas corpus court found that this was only "surplusage" and that it did not render the judgment void. We conclude that the condition was imposed in direct contravention to an express statutory provision and that portion of the judgment is, therefore, void upon its face. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000).

However, we further conclude that the proper remedy is to remand the case to the original court of conviction for entry of a corrected judgment that deletes the condition of supervision illegally imposed by the original trial court. As discussed by our supreme court in Smith v. Lewis, 202 S.W.3d 124, 130 (Tenn. 2006), "where the illegality infects only the sentence, only the sentence is rendered void and habeas corpus relief may be granted to the extent of the sentence only." In this case, the record reflects that the petitioner pled guilty to aggravated sexual battery with an agreed sentence of nine years. There is nothing in the record to demonstrate that the illegal condition of supervision was a bargained-for element of the guilty plea. The record does reflect, however, that the original trial court imposed the condition of supervision "sua sponte and independent of the plea bargain." Id. Therefore, we conclude that the illegal condition is void, but the petitioner's conviction for aggravated sexual battery remains intact.

CONCLUSION

The habeas corpus court's judgment summarily dismissing the petition for writ of habeas corpus is reversed. The case is remanded to the habeas corpus court for entry of an order remanding

this matter to the original convicting court for entry of a corrected judgment indicating the petitioner's conviction for aggravated sexual battery and a sentence of nine years to be served at one hundred percent as a violent offender, with community supervision for life.

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D. KELLY THOMAS, JR., JUDGE